

TERRY A. DAKE, LTD.
11811 North Tatum Boulevard
Suite 3031
Phoenix, Arizona 85028-1621
Telephone: (480) 368-5199
Facsimile: (480) 368-5198
tdake@cox.net

Terry A. Dake - 009656

Attorney for Trustee

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF ARIZONA

In re:)	In Chapter 7 Proceedings
)	
SUSAN MARIA CABRAL;)	Case No. 2:09-BK-23136-SSC
)	
Debtor.)	
<hr/>		
BRIAN J. MULLEN,)	
TRUSTEE,)	Adversary No. 2:10-AP-1049
)	
Plaintiff,)	
)	C O M P L A I N T
v.)	
)	
SUSAN MARIA CABRAL,)	
LIANA HURLEY BLAIR)	
aka Liana H. Blair)	
aka Liana M. Blair,)	
)	
Defendants.)	
<hr/>		

Brian J. Mullen, ("Mullen"), as trustee of the bankruptcy estate of Susan Maria Cabral, for his Complaint, says as follows:

1. Mullen is the duly appointed trustee of the bankruptcy estate of Susan Maria Cabral, Bankruptcy Case No. 2:09-BK-23136-SSC.

2. This Court has jurisdiction of this matter pursuant to 28 U.S.C. §157(b)(2). This is a core proceeding.

3. Susan Maria Cabral ("Cabral") is the debtor in this bankruptcy case.

4. Liana Hurley Blair aka Liana H. Blair aka Liana M. Blair ("Blair") is Cabral's sister. Blair is an insider as that term is defined in 11 U.S.C. §101(31).

5. This case was filed as a voluntary Chapter 7 proceeding on September 17, 2009.

6. On her Schedule B, at Item 2, Cabral disclosed three checking, savings or other financial accounts: a Bank of America checking and savings and an Avida checking.

7. In her Statement of Financial Affairs, at Item 11, Cabral reported that she had no financial accounts that were closed during the one year immediately preceding the commencement of the case.

8. At the time that this case was filed, Cabral actually had the following open financial accounts:

Bank	Redacted Account Number
Avidia Checking	xxx1408
Bank of America Checking	xxx1930
Bank of America Savings	xxx7966
Digital Federal Credit Union	xxx8501-S1
Digital Federal Credit Union	xxx8501-S3
WellsTrade Brokerage	xxx4468

9. During the one year immediately preceding the commencement of the case, Cabral closed the following financial accounts:

Bank	Redacted Account Number
Bank of America Money Mkt Savings	xxx7481
Wells Fargo Prime Checking	xxx3831
Wells Fargo Market Savings	xxx5088
Wells Fargo Prime Checking	xxx0500

1 Wells Fargo Performance Savings xxx9554

2 Morgan Stanley Active Assets xxx5115

3 10. Although Cabral now disputes her ownership of the account
4 at Digital Federal Credit Union ("DFCU"), in a mortgage loan application
5 signed by Cabral on March 29, 2009, less than 6 months before this
6 bankruptcy case was filed, Cabral represented to Countrywide Bank that
7 the account at DFCU, which then had a balance of \$101,215.66, was
8 Cabral's account. If in fact Cabral does not own the DFCU account, then
9 Cabral has made a false statement to a federally insured financial
10 institution.

11 11. When the trustee conducted Cabral's Rule 2004 examination
12 on May 21, 2010, Cabral invoked her 5th Amendment privilege against self-
13 incrimination and refused to answer questions about the DFCU account.

14 12. Cabral reported no transfers of money or property during
15 the two years preceding the commencement of the case at Item 10 of her
16 Statement Of Financial Affairs.

17 13. On April 25, 2009, Cabral transferred \$7,000.00 to Blair
18 from Cabral's account at Avidia Bank.¹

19 14. On March 19, 2009, Cabral transferred \$83,962.46 for the
20 purchase of a house in Fountain Hills, AZ.

21 15. Beginning in May of 2009, Cabral withdrew thousands of
22 dollars in cash from her Wells Fargo accounts. At her Rule 2004
23 examination, Cabral testified that she used that money to pay cash to
24

25
26 ¹ Avidia Bank was formerly known as Hudson Savings Bank.
27 Cabral's check no. 7331 to Blair is a check printed with the Hudson
28 Savings Bank logo.

1 contractors who worked on the Fountain Hills house she has just
2 purchased, or to travel across the country.

3 16. On April 17, 2009, Cabral's accounts at DFCU had a
4 balance of \$101,263.65.

5 17. On April 30, 2009, \$101,258.65 was transferred from
6 Cabral's account at DFCU account to a new account at DFCU in the name of
7 Blair, account no. xxx6563.

8 18. The signature card for DFCU account no. xxx6563 says that
9 Blair is holding the funds in the account in trust for the benefit of
10 Cabral.

11 19. Blair contends that the money in the DFCU account is
12 being held in trust by Cabral as a trustee for Blair's children.

13 20. At Item 14 of her Statement of Financial Affairs, Cabral
14 reported that she did not hold or control any property owned by another
15 person. If what Blair now contends is true, then Cabral's response to
16 Item 14 is false.

17 21. Cabral reported \$828.00 of interest income from DFCU on
18 her 2008 federal income tax return. If in fact the money in the DFCU
19 account did not belong to Cabral, then there is no reason for Cabral to
20 report the interest income on her personal tax return. As of this date,
21 Cabral has not provided to the trustee copies of her 2009 state and
22 federal income tax returns.

23 22. Money has been removed from the DFCU account in Blair's
24 name after the bankruptcy case has been filed. At this time, trustee
25 does not know who withdrew the money or what has been done with it.

26 23. Cabral's conduct is knowing, wilful and fraudulent and is
27 intended to hinder, delay and defraud creditors and the trustee.

24. Pursuant to 11 U.S.C. 11 U.S.C. §727(a)(2)(A) and (B), (a)(3), (a)(4)(A), (a)(4)(D) and (a)(6), the Court shall deny the discharge of Cabral.

25. The transfers made to Blair were intended to hinder, delay and defraud creditors and are avoidable by the trustee pursuant to 11 U.S.C. §548(a)(1)(A) and/or 11 U.S.C. §544(b) and A.R.S. §44-1001 et seq.

26. The money in the DFCU account is property of the bankruptcy estate and Blair and Cabral are jointly and severally liable to the trustee for the turnover of those funds pursuant to 11 U.S.C. §541, 11 U.S.C. §521 and 11 U.S.C. §542.

27. Blair and Cabral's exercise of dominion and control over the money in the DFCU account is a wilful violation of the automatic stay of 11 U.S.C. §362. Pursuant to 11 U.S.C. §362(k) and 11 U.S.C. §105, Blair and Cabral are jointly and severally liable for all actual damages sustained by the bankruptcy estate, including costs and attorneys' fees, along with punitive damages.

28. Cabral's exempt assets must be surcharged to make the estate whole. Latman v. Burdette, 366 F.3d 774 (9th Cir. 2004).

WHEREFORE, the trustee prays:

A. For the entry of an order denying the discharge of Cabral pursuant to 11 U.S.C. §727(a)(2)(A) and (B), (a)(3), (a)(4)(A), (a)(4)(D) and (a)(6).

B. For a judgment against Blair for an amount not less than \$101,258.65 pursuant to 11 U.S.C. §548(a)(1)(A) and/or 11 U.S.C. §544(b) and A.R.S. §44-1001 et seq. and 11 U.S.C. §551.

1 C. For a judgment against Blair and Cabral, jointly and
2 severally, for an amount not less than \$101,258.65 pursuant to 11 U.S.C.
3 §541, 11 U.S.C. §521, 11 U.S.C. §542, 11 U.S.C. §362(k) and 11 U.S.C.
4 §105, along with actual attorneys' fees and costs incurred, along with
5 punitive damages of not less than \$500,000.00.

6 D. For an award interest on all amounts at the federal
7 district court judgment rate from April 30, 2009 to the date of payment
8 in full.

9 E. For the entry of an order authoring the trustee to take
10 possession of and sell Cabral's otherwise exempt assets to the extent
11 necessary to pay all amounts awarded to the trustee.

12 DATED June 9, 2010.

13 **TERRY A. DAKE, LTD.**

14 By /s/ TD009656
15 Terry A. Dake - 009656
16 11811 North Tatum Boulevard
17 Suite 3031
18 Phoenix, Arizona 85028-1621
19 Attorney for Trustee
20
21
22
23
24
25
26
27
28